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EXEMPTION FROM PAYMENT OF STATE FEES IN THE COURTS FOR SOCIALLY VULNERABLE PEOPLE (MONITORING LEGISLATION)

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Abstract. *The authors examined the issues of exemption from payment of state duties in the courts of socially vulnerable segments of the population both in the Republic of Kazakhstan and in foreign legislation.*

In the Constitution of the Republic of Kazakhstan, the «right to judicial protection» is enshrined as the main guarantee of the protection of the rights and legitimate interests of citizens. This right is absolute and inalienable and is not subject to limitation in any cases.

Turning to the legal nature of the state duty, the authors concluded that the collection of the duty itself is consistent with the provisions of the Constitution, since the payment of taxes, fees and other obligatory payments is the responsibility and duty of everyone.

However, the size of the state fee and the ability of a participant in legal proceedings to pay it may have a deterrent effect on the ability of individuals to seek restoration of their rights through resorting to available forms of legal proceedings.

To overcome this financial barrier in realizing the right to judicial protection, article 616 of the Code of the Republic of Kazakhstan «On taxes and other obligatory payments to the budget» (hereinafter - TC) provides for grounds for exemption from payment of state fees in the courts, including when filing petitions for review judicial acts in cassation, based on the category of the claim or the subject of the legal relationship.

The authors believes that the current version of subparagraph 13) of article 616 of the TC, which provides benefits only to plaintiffs, does not consider the fact that other participants in the process (defendants) belonging to socially vulnerable segments of the population were deprived of legal instruments that could compensate for their financial failure to pay the established state duty rates when applying for protection of one's rights to the cassation court.

Keywords: *Tax Code, state duty, exemption from payment of state duty in courts, a person with a disability, access to justice, plaintiff, defendant*

ХАЛЫҚТЫҢ ӘЛЕУМЕТТІК ОСАЛ ТОПТАРЫНЫҢ СОТТАРЫНДА МЕМЛЕКЕТТІК БАЖ ТӨЛЕУДЕН БОСАТУ (ЗАҢНАМА МОНИТОРИНГІ)

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Аннотация. Авторлар Қазақстан Республикасында да, шетелдік заңнамада да халықтың әлеуметтік осал топтарының соттарында мемлекеттік баж салығын төлеуден босату мәселелерін қарады.

Қазақстан Республикасының Конституциясында «сот қорғауына құқық» азаматтардың құқықтары мен заңды мүдделерін қорғаудың негізгі кепілі ретінде бекітілген. Бұл құқық абсолютті және бөлінбейтін болып табылады және ешқандай жағдайда шектеуге жатпайды.

Мемлекеттік баждың құқықтық сипатына сілтеме жасай отырып, авторлар баждың өзі Қазақстан Республикасы Конституциясының ережелеріне сәйкес келеді деген қорытындыға келді, өйткені салықтарды, алымдарды және басқа да міндетті төлемдерді төлеу әркімнің міндеті мен борышы болып табылады.

Алайда, мемлекеттік баждың мөлшері және сот ісін жүргізуге қатысушының оны төлеу қабілеті адамдардың сот ісін жүргізудің қолда бар нысандарына жүгіну арқылы олардың құқықтарын қалпына келтіруге қол жеткізу мүмкіндігіне тежегіш әсер етуі мүмкін.

Сот арқылы қорғалу құқығын жүзеге асырудағы осы қаржылық кедергіні еңсеру үшін «Салық және бюджетке төленетін басқа да міндетті төлемдер туралы» Қазақстан Республикасы Кодексінің (бұдан әрі – СК) 616-бабында соттарда мемлекеттік бажды төлеуден босату негіздері көзделген, оның ішінде талап қою санатына немесе құқықтық қатынастың нысанына қарай кассациялық тәртіпте сот актілерін қайта қарау туралы өтінішхаттар берген кезде.

Авторлар СК-нің 616-бабының 13) тармақшасының тек талапкерлерге ғана жеңілдіктер қарастыратын қолданыстағы редакциясында процеске басқа қатысушылардың (жауапкерлердің) халықтың әлеуметтік осал топтарына жататындығы ескерілмейді деп есептейді. кассациялық сатыдағы сотқа өз құқықтарын қорғау туралы өтінішхат берген кезде белгіленген мемлекеттік баж мөлшерлемелерін төлеудегі қаржылық кемшіліктерінің орнын толтыруға мүмкіндік беретін құқықтық құралдардан айырылды.

Түйінді сөздер: салық кодексі, мемлекеттік баж, соттарда мемлекеттік бажды төлеуден босату, мүгедектігі бар адам, сот төрелігіне қол жеткізу, талапкер, жауапкер

ОСВОБОЖДЕНИЕ ОТ УПЛАТЫ ГОСУДАРСТВЕННОЙ ПОШЛИНЫ В СУДАХ СОЦИАЛЬНО УЯЗВИМЫХ СЛОЕВ НАСЕЛЕНИЯ (МОНИТОРИНГ ЗАКОНОДАТЕЛЬСТВА)

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Аннотация. Авторами были рассмотрены вопросы освобождения от уплаты государственной пошлины в судах социально уязвимых слоев населения как в Республике Казахстан, так и в зарубежном законодательстве.

В Конституции Республики Казахстан «право на судебную защиту» закреплено в каче-

стве основной гарантии защиты прав и законных интересов граждан. Данное право является абсолютным и неотчуждаемым и не подлежит ограничению ни в каких случаях.

Обращаясь к правовой природе госпошлины, авторы пришли к выводу, что само взимание пошлины согласуется с положениями Конституции Республики Казахстан, поскольку уплата налогов, сборов и иных обязательных платежей является обязанностью и долгом каждого.

Однако, размер государственной пошлины и способность участника судопроизводства ее уплатить может оказывать сдерживающее воздействие на возможность лиц добиваться восстановления их прав через обращение к имеющимся формам судопроизводства.

Для преодоления данного финансового барьера в реализации права на судебную защиту в статье 616 Кодекса Республики Казахстан «О налогах и других обязательных платежах в бюджет»² (далее - НК) предусматриваются основания освобождения от уплаты государственной пошлины в судах, в том числе при подаче ходатайств о пересмотре судебных актов в кассационном порядке, исходя из категории иска или субъекта правоотношения.

Авторы полагают, что действующая редакция подпункта 13) статьи 616 НК, предоставляющая льготы только истцам, не учитывает тот факт, что другие участники процесса (ответчики), относящиеся к социально-уязвимым слоям населения, оказались лишены правовых инструментов, которые могли бы компенсировать их финансовую несостоятельность уплатить установленные ставки государственной пошлины при обращении за защитой своих прав в суд кассационной инстанции.

Ключевые слова: налоговый кодекс, государственная пошлина, освобождение от уплаты государственной пошлины в судах, лицо с инвалидностью, доступ к правосудию, истец, ответчик

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Introduction

According to the Constitution of the Republic of Kazakhstan, a person, his rights and freedoms are the highest value of the state (paragraph 1 of article 1)³, and their recognition, observance and protection is the duty of the state. Rights and freedoms are recognized and guaranteed by the State and in accordance with the Constitution of the Republic of Kazakhstan, are innate, absolute and inalienable, determine the content and application of laws and other normative legal acts.

According to this constitutional provision, the state not only declares the rights and freedoms of man and citizen, but also ensures their protection, creating all necessary conditions.

Some norms of the Constitution, namely articles 13 and 14, have been the subject of consideration more than once in a number of final resolutions of the constitutional control body of the Republic of Kazakhstan. As noted in them, the main guarantee for the protection of the rights and legitimate interests of citizens is the right to judicial protection, enshrined in paragraph 2 of article 13 of the Constitution of the Republic of Kazakhstan, which includes the

right to appeal against court decisions. This right is absolute and inalienable and is not subject to restriction in any case (paragraph 3 of article 39 of the Basic Law).

In accordance with article 14 of the Constitution of the Republic of Kazakhstan, everyone is equal before the law and the court. No one may be subjected to any discrimination based on origin, social, official and property status, gender, race, nationality, language, attitude to religion, beliefs, place of residence or any other circumstances.

The above-mentioned provisions correspond to the provisions of generally recognized international acts.

Thus, the approaches established by the legislation of the Republic of Kazakhstan correspond to the provisions of international legal acts, the obligations of which the Republic of Kazakhstan has assumed.

The right to access to justice in an international legal context is enshrined in article 8 of the Universal Declaration of Human Rights, which stipulates that «everyone has the right to effective restoration of rights by competent national courts in cases of violation of his fundamental rights

² Кодекс Республики Казахстан от 25 декабря 2017 года № 120-VI ЗРК «О налогах и других обязательных платежах в бюджет (Налоговый кодекс)» <https://adilet.zan.kz/rus/docs/K1700000120> (дата обращения: 01.05.2024).

³ Конституция Республики Казахстан https://adilet.zan.kz/rus/docs/K950001000_ (дата обращения: 01.05.2024).

granted to him by the Constitution or the law»⁴.

Also, articles 14 and 26 of the International Covenant on Civil and Political Rights⁵ speak about equality before courts and tribunals, the right to a fair and public hearing by a competent, independent and impartial court (article 14), equality before the law (article 26). These rights must be respected both in judicial procedures and in procedures that are judicial in nature (United Nations Human Rights Committee general comment No. 32⁶ on article 14: Equality before courts and tribunals and the right of everyone to a fair trial).

In addition, in December 2008, Kazakhstan signed the Convention on the Rights of Persons with Disabilities, which was adopted on December 13, 2006 (hereinafter referred to as the Convention) and its Optional Protocol. In 2015, Kazakhstan ratified the Convention itself⁷.

Article 12 of the Convention stipulates, «States parties affirm that every person with disabilities, wherever he or she is, has the right to equal legal protection.

The Participating States recognize that persons with disabilities have legal capacity on an equal basis with others in all aspects of life».

Article 13 states that «states parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including by providing for procedural and age-appropriate adjustments to facilitate their effective role as direct and indirect participants, including witnesses, at all stages of the legal process, including the investigation stage and other stages of pre-trial proceedings».

Thus, Kazakhstan has undertaken to ensure the protection of the rights of citizens with disabilities in accordance with international standards.

Materials and methods

The authors used normative sources, including foreign ones.

The article uses dialectical, legal-positivist, normative and system-structural methods of cognition.

Results and discussion

The constitutional obligation and duty to pay

taxes, fees and other mandatory payments are universal and are enshrined in article 35 of the Constitution of the Republic of Kazakhstan.

State duty is a payment to the budget levied for the commission of legally significant actions, including when applying to the court (paragraph 1 of article 607 of the TC of 2017).

In addition, the current legislation does not provide for a delay or installment payment. The exception is only one case of deferral from payment of state duty on consumer protection claims filed by a citizen (part three of article 106 of the Civil Procedure Code of the Republic of Kazakhstan dated October 31, 2015).

The constitutional right to judicial protection must be ensured for all citizens without discrimination. Restricting access to the court on the basis of status in the judicial process is contrary to the principles of equality before the law laid down in article 14 of the Constitution of the Republic of Kazakhstan

According to Egorova T.V., the legal regulation of the institute of court costs pursues several goals.

Firstly, the set of legal norms regulating issues of court costs serves to create incentives for interested parties to act within the framework of the law, illustrating that the court is the last instance for resolving the conflict. The legal regulation of the institution of court costs allows to a certain extent to reduce the appeal to the courts with obviously unreasonable demands, and can also stimulate debtors in civil turnover to perform their duties under the threat of compensation in case of satisfaction of the claim of all court costs, to induce the obligated person to voluntarily and timely fulfill their obligations, to settle their dispute with interested parties in accordance with the current legislation without involving a court in its resolution.

Secondly, the legal regulation of court costs is aimed at ensuring the operation of a mechanism for compensating expenses related to consideration in court, contributing to the restoration of the right and property status of the subject of the process.

Thirdly, the legal regulation of court costs is aimed at achieving the objectives of the proceedings and is based on the fundamental

⁴ Всеобщая декларация прав человека. Принята резолюцией 217 А (III) Генеральной Ассамблеи ООН от 10 декабря 1948 года https://www.un.org/ru/documents/decl_conv/declarations/declhr.shtml (дата обращения: 02.05.2024).

⁵ Закон Республики Казахстан от 28 ноября 2005 года N 91 «О ратификации Международного пакта о гражданских и политических правах» https://adilet.zan.kz/rus/docs/Z050000091_ (дата обращения: 01.05.2024).

⁶ Замечание общего порядка № 32 CCPR/C/GC/32 от 23 августа 2007 года к статье 14 https://www.sud.gov.kz/sites/default/files/zamechanie_obshchego_poryadka_kpch_no32.pdf (дата обращения: 01.05.2024).

⁷ Закон Республики Казахстан от 20 февраля 2015 года № 288-V ЗРК «О ратификации Конвенции о правах инвалидов», 7 июня 2023 года был подписан Закон Республики Казахстан от № 8-VIII «О ратификации Факультативного протокола к Конвенции о правах инвалидов». <https://adilet.zan.kz/rus/docs/Z1500000288> (дата обращения: 01.05.2024).

principles of procedural law, ensures the right to appeal to the court and to consider the case on its merits, the qualification of the trial, the fullest possible presentation of evidence during the consideration of the case, the rights of the parties to protection and qualified legal assistance, the fastest possible consideration of the case in court in court, the issuance of a lawful, reasonable and fair judicial act [1, с.409].

As the well-known scientist Suleimenov M.K. writes, it is necessary to find a reasonable balance between the accessibility of justice and excessive workload of the courts, including from a large number of unfounded lawsuits. Considering foreign experience, it is possible to raise the amount of state duty rates in courts.

M.K. Suleimenov points out that: «it is necessary ... to take a differentiated approach to the claims of individuals, on the one hand, and the claims of individual entrepreneurs and legal entities, on the other hand. That is, to distinguish between household and commercial risks.

It should be noted that no matter what changes we make in relation to increasing or decreasing the rates of court fees, it is necessary to keep in mind the Recommendation on ways to facilitate access to justice, adopted by the Committee of Ministers of the Council of Europe on May 14, 1981: «1. Admission to legal proceedings should not be subject to the payment by a party to the state of any sum of money, the amount of which is unreasonable in relation to the case under consideration. 12. To the extent that legal costs are a clear barrier to access to justice, they should, where possible, be reduced or eliminated. The system of legal costs should be reviewed from the point of view of its simplification» [2].

Thus, by establishing in the TC the procedure for paying and exempting a certain category of citizens from paying state duty, the legislator acted within the powers granted to him by law, as well as the legal nature of the state duty in the courts, its purpose and the measures taken by the state to support socially vulnerable segments of the population.

In turn, the analysis of the Kazakh legislation on payment of state duty in the courts showed the following: 1) the release of plaintiffs from paying court fees for statements of claim submitted to the court is provided for by two criteria: the category of the plaintiff and the category of the subject of the claim; 2) the release of defendants from paying state fees is not provided, except

for disputes related to compensation for damage caused to a citizen by illegal conviction, illegal application of a preventive measure in the form of detention or illegal imposition of an administrative penalty in the form of arrest.

For reference:

Historically, certain benefits for the payment of state duties on the territory of our country were provided even during the period of joining the Soviet Union.

Thus, by Decree of the Presidium of the Supreme Soviet of the USSR dated April 10, 1942⁸, categories of cases were defined in which plaintiffs and defendants were exempt from paying the state fee for filing lawsuits and cassation complaints (for example, plaintiffs and defendants in cases of collecting arrears on taxes and non-tax payments to state and local budgets).

Tax exemption in all categories of cases was first introduced for plaintiffs who participated in the Great Patriotic War on December 19, 1992 with the adoption of the Law «On State Duty». On December 31, 1996, this benefit was additionally granted to plaintiffs with disabilities of groups I and II.

At the same time, article 616 of the TC of 2017 lists an exhaustive, specific list of grounds for exemption from payment of state duty in courts based on the category of the claim or the subject of the legal relationship.

The following persons are included in subparagraph 13) of this article:

«13) plaintiffs – veterans of the Great Patriotic War, veterans equated by benefits to veterans of the Great Patriotic War, and veterans of military operations on the territory of other states, persons awarded orders and medals of the former USSR for selfless work and impeccable military service in the rear during the Great Patriotic War, persons who worked (served) for at least six months from June 22, 1941 to May 9, 1945 and those who were not awarded orders and medals of the former USSR for selfless work and impeccable military service in the rear during the Great Patriotic War, persons with disabilities, as well as one of the parents of a person with a disability since childhood, a child with a disability – in all cases and documents;».

In the TC of 2001⁹, the provisions of article 616 were fixed in article 501 in the following wording: paragraph 12) plaintiffs-participants of the Great Patriotic War and persons equated to them, disabled persons of groups I and II - in all

⁸ Указ Президиума ВС СССР от 10.04.1942 о государственной пошлине <https://ru.wikisource.org/wiki/> (дата обращения: 22.03.2024)

⁹ Налоговый Кодекс РК от 12 июня 2001 года № 209-III (утратил силу) (дата обращения: 01.05.2024).

cases and documents.

In the TC of 2008¹⁰, these provisions were enshrined in article 541. Subparagraph 12) stated: 12) the plaintiffs-participants of the Great Patriotic War and persons equated to them, persons awarded orders and medals of the former USSR for selfless work and impeccable military service in the rear during the Great Patriotic War, persons who worked (served) for at least six months from June 22, 1941 to May 9, 1945, and those who were not awarded orders and medals of the former USSR for selfless work and impeccable military service in the rear during the Great Patriotic War, disabled people, as well as one of the parents of a disabled person from childhood - in all cases and documents.

Thus, the category of persons exempts from paying state duty in the courts included «persons with disabilities, as well as one of the parents of a disabled person from childhood - in all cases and documents».

In the current version of article 616 of the TC of 2017, «disabled» were replaced by «persons with disabilities», and «one of the parents of a disabled person from childhood» by «one of the parents of a child with disabilities», as well as, unlike the TC of 2001 and 2008, the circle of persons exempts from paying state duty when the filing of lawsuits and applications has been expanded.

In addition, in the second part of article 616 of the TC of 2017, the provision is fixed that the persons specified in the first part of this article are exempt from paying state duty in courts also when appealing judicial acts.

We believe that the application of the provisions of subparagraph 13) of part one of article 616 of the TC of 2017, in conjunction with part two of this article, does not meet the requirements of legal accuracy, which in practice leads to violations of the constitutional principle of equality of all before the law and the court.

Taking into account the understanding of paragraph 1 of article 14 of the Constitution of the Republic of Kazakhstan, the wording of part two of article 616 of the TC of 2017, which provides for the exemption of persons specified in part one of this article from paying state duty in courts also when appealing judicial acts, does not allow the application of support mechanisms provided by law to all persons (regardless of procedural status), classified as socially vulnerable segments of the population.

In this regard, in order to exclude infringement of the constitutional rights of citizens and an

unambiguous understanding of the contested norm (especially in matters related to civil liability), it is necessary to improve the provisions of part two of article 616 of the TC of 2017, aimed at strict observance of the constitutional principle of equality of all before the law and the court.

We believe it is correct, when interpreting the provisions of part two of article 616 of the TC of 2017 «persons specified in part one of this article are exempt from paying state duty in courts also when appealing judicial acts», to proceed from the category of the subject applying for a review of judicial acts.

Such an interpretation would allow, when applying subparagraph 13) of the first part of article 616 of the TC of 2017, to exempt from payment of state duty in courts when applying to persons specified in part one of this article with petitions for review of judicial acts, regardless of their procedural status (plaintiff or defendant).

Along with this, in order to solve the current problem, it is possible to expand the list of persons entitled to free legal assistance or, as Savinova A.V. suggests, to create an «institute of poverty law in the proceedings of courts of general jurisdiction, arbitration courts, magistrates, based on the income and level of prosperity of the participants in the process» [3, c. 155].

The studied experience of foreign countries on the payment of state fees in courts shows that there are various mechanisms for exemption from their payment, the provision of benefits, including to persons with disabilities.

The provision of benefits for the payment of court fees for certain legal entities and individuals is a common practice all over the world.

Thus, the institution of payment of state duty in the courts and the provision of benefits is regulated in more detail in the legislation of England and Germany.

The United Kingdom ranked 8th in terms of the effectiveness of justice, ahead of Belgium, France and the United States. In 2015, tariff growth in England ranged from 600% to 1000% for disputes of different categories, which, in our opinion, will become a stumbling block for those wishing to resolve the issue through the courts.

In the UK, a fee is required to file a claim, the amount of which varies from 35 pounds to 10,000 pounds. However, it should be noted that in English courts, in addition to paying a fee for filing a statement of claim, the filing of certain procedural documents during the trial is also subject to fees. Thus, in order to consider an

¹⁰ Налоговый кодекс РК от 10 декабря 2008 года № 99 (утратил силу) (дата обращения: 01.05.2024).

appeal in the District Court, a fee of 140 pounds must be paid, and in the Supreme Court – 240 pounds¹¹.

In Germany, on the basis of the Civil Procedure Law, certain persons are exempt from paying court costs to the state budget (for more information, see article 43 of the GPA)¹², but there is no mention of «disabled people».

In addition, the Civil Procedure Law provides that a court or judge, taking into account the property status of an individual, fully or partially exempts him from paying court costs to state revenues, as well as postpones the payment of court costs to state budget revenues or distributes it by time¹³.

In Germany, the amount of the state fee is determined in accordance with the law, depending on the price of the claim. The maximum claim price for the calculation of the fee is 30 million euros. In order to comply with the principle of equality before the court, the court can help the poor to conduct a case or reduce the price of a claim. Assistance in conducting cases in court also covers the payment of legal services.

In Germany, the amount of the state duty is determined in accordance with the law depending on the value of the claim. The maximum value of the claim for calculating the duty is 30 million euros. To comply with the principle of equal rights before the court, the court can provide low-income people with assistance in pursuing a case or reduce the cost of the claim, she explains. Assistance for conducting cases in court also includes payment for legal services.

At the same time, despite the details, a small number of subjects have the right to claim benefits for payment of state duty in the courts.

Only the poorest segments of the population and the unemployed have the right to deferral and installments in these countries. Nevertheless, for these categories of persons, obtaining certain benefits may present certain difficulties.

In England and Germany, there are special procedures for determining a person's financial status, which include filling out various questionnaires and obtaining certificates from credit institutions, social and law enforcement agencies. Only after collecting all the necessary documents, one can hope for the judge to provide benefits for paying the fee.

For example, the Civil Procedure Code of German of 1877, which is still in force with numerous changes, even in its original version

contained rules aimed at reducing the «property barrier» of access to judicial protection. They were contained in a subsection entitled «The Right of the Poor» (Armenrecht). This institution still exists today. The last major reform took place in 1979-1980. The current provisions of the CPC are based on the wording that entered into force on January 1, 1980. The subsection was renamed «Assistance in the costs of conducting the process» (Prozesskostenhilfe). Simultaneously with this reform, a separate law introduced «Consulting assistance» (Beratungshilfe), which is financial support for obtaining legal advice [4, p. 106].

In addition, the status must be periodically confirmed, since full exemption from payment of expenses is possible only in exceptional cases at the discretion of the judge. Ultimately, the parties have to reimburse all costs of the trial according to the approved schedule. In general, the rules on benefits and other allowances for the payment of court costs in many foreign countries are at the stage of development and do not yet provide full access to justice for all.

The experience of Spanish civil proceedings is interesting. In the first book of the Code of Civil Procedure (hereinafter referred to as the CPC) Spain (Civil Procedure Law) the second section of the first title (35 articles) is specifically dedicated to the institution of free justice.

Free justice refers to a system of procedural guarantees that provides access to justice for citizens with low social and property status. These guarantees include exemption from court costs, provision of free qualified legal assistance, as well as the possibility of conducting a case with the help of government representatives (for example, prosecutors).

There are two legal possibilities for granting the right to free justice to an interested person. In the first case, this right is enshrined in law and does not require special confirmation: the party must only submit documents confirming its social and property status (average earnings, number of dependents or disability) in order to meet the criteria established in the CPC. The judge does not have discretionary powers in this matter and is obliged to inform the parties about the legal grounds for free justice. In this case, an application for free justice is not required, since this right arises automatically by virtue of the law.

The second case is more complicated, it

¹¹ Доступное правосудие: сколько стоит суд в разных странах мира. <https://pravo.ru/review/view/124276/> (дата обращения: 22.03.2024).

¹² <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.sud.gov.kz> (дата обращения: 22.03.2024).

¹³ <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.sud.gov.kz> (дата обращения: 22.03.2024).

provides for the possibility of providing free justice during a special procedure when there are no grounds for an unconditional right to free justice. This procedure is applied only at the request of the person concerned. The party applying for free justice is required to prove in the so-called additional proceedings the existence of circumstances in which the judge will grant the right to free justice. Additional proceedings are conducted by the same judge and in the same court in which the civil case was initiated. The application for the provision of free justice is submitted simultaneously with the statement of claim. The initiation of civil proceedings is not made dependent on the resolution of the issue of free justice. Additional production is carried out simultaneously and in parallel with the main process, without hindering the movement of the latter. However, at the request of the interested party, the proceedings in the case may be suspended – until the end of additional proceedings [5, c. 95-96].

As an example, the intentions of the Spanish Government to improve the system of free legal aid can be cited. In particular, a proposal was submitted to continue the development of a new law on free legal aid, which is under consideration. The period of public hearings on this project ended in July, and the parties agreed to work together to finalize it. The main purpose of the new law is to improve the working conditions of specialists providing legal assistance, as well as updating the relevant scales, which should significantly improve the quality of services provided.

This example demonstrates the importance of legislative changes in the system of providing free legal aid, which can be considered when developing similar measures in other countries.

In the Brazilian legal system, there is an institution of free legal aid and free (gratuitous) justice.

Free legal aid is not excluded if it is not funded by the state, it can also be provided by private entities and organizations, such as unions representing the interests of their partners or members of a certain category, or even by legal practitioners providing free legal aid subordinate to the faculties of private and public law.

The gratuitousness of justice means the refusal to pay procedural costs to the judicial service (article 98, §1 and its paragraphs), even if it is provided by a lawyer voluntarily appointed by the party. This principle is included in the

constitutional procedural legal system and is enshrined in the Constitution [6, c. 9].

In Russia, the idea of «free justice» is supported by Sakhnova T.V., who claims that «... the right to free justice is granted by the decision of a judge completing a special procedure during which a party submits evidence confirming its right to free justice. The legislative consolidation of such procedures would help to embody the idea of a fair trial in the procedural «fabric» of the law. It could take place not only at the stage of initiation of a civil case, but also be «end-to-end», being realized at the stages of preparation of the case, trial [5, c.95].

Of the opposite opinion, Egorova T.V. believes that the amount of the state fee was tangible for the payer and was close to the cost of the trial for the federal budget [7, p.76].

Thus, in the TC of the Russian Federation¹⁴, article 333.36 establishes benefits when applying to the Supreme Court, courts of general jurisdiction, and justices of the peace

This article indicates who is exempt from paying the state duty on cases:

1) public organizations of persons with disabilities acting as plaintiffs (administrative plaintiffs) or defendants (administrative defendants);

2) plaintiffs (administrative plaintiffs) - disabled persons of group I or II, children with disabilities, disabled since childhood;

There are no such norms in the tax legislation of the Republic of Belarus.

In Uzbekistan, in accordance with the Law of the Republic of Uzbekistan dated 06.01.2020 No. ZRU-600 «On State duty»¹⁵, article 8 establishes exemption from payment of state duty in civil courts: 17) public associations of persons with disabilities, as well as their institutions, educational and production enterprises and associations, are exempt from paying state duty in civil courts for all claims.

Conclusion

The norm of paragraph 2 of article 13 of the Constitution of the Republic of Kazakhstan «Everyone has the right to judicial protection of their rights and freedoms» means the right of any person and citizen to apply to the court for protection and restoration of violated rights and freedoms. The exercise of this right is carried out on the basis and in accordance with the procedure established by law. At the same time, the Constitution of the Republic of Kazakhstan does

¹⁴ Налоговый кодекс Российской Федерации <https://nalog.garant.ru/fns/nk/> (дата обращения: 01.05.2024).

¹⁵ Закон Республики Узбекистан «О Государственной пошлине» <https://lex.uz/ru/docs/4680955> (дата обращения: 01.05.2024).

not define the procedure for the implementation of this constitutional right. It follows from article 75 and subparagraph 3) of paragraph 3 of article 77 of the Constitution of the Republic of Kazakhstan that this mechanism is established in the laws of the Republic regulating the issues of the organizational and legal structure of the judicial system and the administration of justice.

Subparagraph 3) of paragraph 3 of article 77 of the Constitution of the Republic of Kazakhstan assumes the existence of rules on the jurisdiction of cases. The competence of the various levels of courts is determined only by the range of cases assigned by law to their jurisdiction. The procedural procedure for the consideration of cases in the judicial system of the country is uniform and mandatory for all defendants. This guarantees the absence of privileges for any group of persons and does not infringe on the right to judicial protection of the rights and freedoms of every citizen.

The content of article 14 of the Constitution of the Republic of Kazakhstan fully corresponds to article 7 of the Universal Declaration of Human Rights, which proclaimed that «All people are equal before the law and have the right, without any distinction, to equal protection of the law. All people have the right to equal protection from any discrimination that violates this Declaration and from any incitement to such discrimination».

It also complies with the provisions of the International Covenant on Civil and Political Rights.

As the analysis of foreign legislation shows,

there are various mechanisms for exemption from their payment, the provision of benefits to socially vulnerable categories of citizens who need tax preferences when applying to court for judicial protection.

The wording of article 616 of the TC of 2017 does not fully consider the property status of already certain categories of citizens as vulnerable segments of the population.

The contested norm of the Tax Code does not provide socially vulnerable categories of the population in the procedural status of a defendant or a third person with the possibility of exemption from payment of state duty when filing counterclaims or appealing judicial acts in cassation, thereby limiting their right to judicial protection.

In order to exclude infringement of the constitutional rights of citizens and an unambiguous understanding of the contested norm (especially in matters related to civil liability), it is necessary to improve the provisions of part two of article 616 of the TC of 2017, aimed at strict observance of the constitutional principle of equality of all before the law and the court.

To provide for an equal approach when exempting such persons from paying state fees, regardless of their procedural status, as well as the introduction of other mechanisms to overcome the barrier to the realization of the constitutional right to judicial protection at the stage of appealing judicial acts.

Authors' contributions

Kaliakperova E.N. – introduction; methodology; statistical data processing; results and discussion; conclusion; literature design; transliteration.

Kusmanova L.E. – compilation of a list of bibliographic sources; information about authors; search and processing of statistical data; abstract; conclusion.

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